



Eric Gonzalez
District Attorney

**DISTRICT ATTORNEY
KINGS COUNTY**

350 JAY STREET
BROOKLYN, NY 11201-2908
(718) 250-2000
WWW.BROOKLYNDA.ORG

[INSERT NAME]
Assistant District Attorney

[INSERT DATE]
[INSERT D/C INFO]

Re: [INSERT CASE NAME]
Kings County Dkt./Ind. No. [#####]

In connection with the above-named case, the People voluntarily provide the following information regarding:

MOS NAME: MICHAEL WALLACE

MOS TAX: 955659

in satisfaction (to the extent applicable) of their constitutional, statutory, and ethical obligations. Further, the People reserve the right to move in limine to preclude reference to this information, or otherwise to object to its use and/or introduction into evidence.

Disclosure # 1:

ON DECEMBER 5, 2018, FOLLOWING A DUNAWAY/MAPP/HUNTLEY HEARING IN P V. XXXX (KINGS COUNTY INDICTMENT NUMBER 8854/2017), ACTING SUPREME COURT JUSTICE SHAREN D. HUDSON GRANTED THE DEFENDANT'S MOTION TO SUPPRESS PHYSICAL EVIDENCE (NAMELY, A FIREARM) RECOVERED FROM A VEHICLE AND DEFENDANT'S STATEMENTS TO THE POLICE. TWO POLICE OFFICERS TESTIFIED AT THE HEARING ON BEHALF OF THE PEOPLE. THE DEFENDANT TESTIFIED ON HIS OWN BEHALF. THE COURT RULED THAT PROBABLE CAUSE FOR THE SEARCH RESTED ON THE TESTIMONY OF POLICE OFFICER MICHAEL WALLACE, SHIELD NUMBER 579. HOWEVER, THE COURT DID NOT CREDIT PO WALLACE'S TESTIMONY ON A KEY FACTUAL ISSUE AND INSTEAD CREDITED DEFENDANT'S TESTIMONY. ACCORDINGLY, THE COURT FOUND THE POLICE LACKED PROBABLE CAUSE FOR THE SEARCH AND THE COURT SUPPRESSED THE PHYSICAL EVIDENCE AND DEFENDANT'S STATEMENTS AS FRUITS OF AN UNLAWFUL SEARCH. THE CASE WAS SUBSEQUENTLY DISMISSED. A COPY OF THE COURT'S DECISION IS ATTACHED.

BASED UPON CCRB DOCUMENTS UP TO DATE THROUGH OCTOBER 13, 2020, THE PEOPLE ARE UNWARE OF ANY PENDING AND OR SUBSTANTIATED CCRB ALLEGATIONS AGAINST THIS OFFICER.

Eric Gonzalez
District Attorney
Kings County

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART GP28

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THE PEOPLE OF THE STATE OF NEW YORK,

DECISION AND ORDER

-against-

Hon. Sharen D. Hudson

Indictment No. 08854-2017

██████████
Defendant.

-----X
The Defendant, ██████████, is charged with violating Penal Law ("PL") § 265.03(3) – Criminal Possession of a Weapon in the Second Degree and other related charges stemming from an incident that allegedly occurred on November 3, 2017. On October 10, 2018 and October 23, 2018, the court held a *Dunaway/Mapp/Huntley* hearing. The People presented two witnesses. The Defendant testified on his own behalf. At the end of the testimony, the parties agreed to submit written arguments and the court adjourned the matter for decision. The court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

At the hearing, the People presented the testimony of Police Officer Matthew Byrnes, Shield Number 25380 of the New York City Police Department. Officer Byrnes testified that on November 3, 2017 at approximately 10:30p.m., he observed a Mitsubishi Galant traveling northbound on Powell Street with one headlight out. Officer Byrnes stated that he proceeded to initiate a car stop by turning on his lights and sirens. Upon pulling the vehicle over, Officer

Byrnes walked towards the driver's side of the vehicle and his partner, Police Officer Gammello, walked towards the passenger's side of the vehicle. According to Officer Byrnes, he observed four males in the vehicle including the Defendant who was sitting in the front passenger seat. Officer Byrnes testified that as he was approaching the vehicle he radioed for backup. Officer Byrnes further testified that when the backup car arrived with Officer Wallace, Officer Montanez and Sergeant Nocerino, the backup car was positioned in front of the Mitsubishi Galant while Officer Byrnes' car was behind the Galant. According to Officer Byrnes when the three additional officers arrived, Officer Wallace went to the passenger side of the vehicle joining Officer Gammello.

Officer Byrnes testified that when Officer Wallace approached the passenger side of the vehicle and looked in the passenger door he stated, "Mary" which is their code word for firearm. Officer Byrnes stated that once the code word was given, everybody was taken out of the vehicle. According to Officer Byrnes, as the Defendant was being placed in handcuffs the Defendant stated, "It's mine and nobody else's." Officer Byrnes testified that after the Defendant made the statement, he walked around to the passenger side of the vehicle and observed the firearm in the bag where the Defendant was previously seated. Officer Byrnes stated his partner, Officer Gammello searched the Defendant and a magazine was recovered from the Defendant's front pocket. Officer Byrnes testified that he and Detective Flores spoke with the Defendant at the 73rd Precinct. Officer Byrnes further testified that the Defendant was advised of his Miranda rights, waived those rights and then agreed to speak with Officer Byrnes and Detective Flores. The interview was videotaped and admitted as People's 2 into evidence.

The People also presented the testimony of Officer Michael Wallace, Shield Number 579 of the New York City Police Department. Officer Wallace testified that on November 3, 2017 he

observed a silver four-door sedan traveling northbound on Powell Street with no headlights on. Officer Wallace testified that when he arrived on the scene of the car stop, he approached the front passenger side of the vehicle. Officer Wallace stated that he observed four male occupants in the vehicle. According to Officer Wallace, he illuminated the vehicle with his flashlight and observed the Defendant to have an open backpack in between his legs. Officer Wallace testified that inside the open backpack he observed a silver and pink firearm with the empty magazine well. Officer Wallace alerted the other officers that there was a firearm inside the vehicle by saying the code word "Mary." According to Officer Wallace, he then asked the Defendant to step out of the vehicle. Officer Wallace testified that after the Defendant stepped out of the vehicle, Officer Wallace took photos of the backpack and gun with his department-issued phone.

The Defendant testified that during the car stop on November 3, 2017, Officer Byrnes and his partner Officer Gammello first approached the Mitsubishi Galant and looked inside with their flashlights. The Defendant stated that after Officer Byrnes took the driver's license and registration of the driver, [name/not def's], both officers walked away and then the other three officers arrived on the scene. According to the Defendant, the backpack was on the floor of the passenger seat between his legs when the car was pulled over. The Defendant testified that the backpack was fully closed when the officers approached the car. The Defendant further testified that Joshua was told to step out of the vehicle and searched. The Defendant stated that afterwards he was told to step out of the vehicle as well and then searched by Officer Gammello. According to the Defendant, all the occupants were taken to the back of the vehicle and after several minutes he heard one of the officers say something about a pink dildo. The Defendant testified that the officers pulled out the firearm and proceeded to [hand]cuff all the occupants of the vehicle. The Defendant further stated that the officers asked whose weapon it was, and the

Defendant told them it was his. According to the Defendant, when he was placed inside the police car Officer Byrnes came to him and asked where the magazine was. The Defendant stated it was in his pocket.

CONCLUSIONS OF LAW

Dunaway/Mapp

At a *Dunaway/Mapp* hearing, the People have the initial burden of showing the legality of the police conduct. *People v. Whitehurst*, 25 N.Y.2d 389 (1969). The burden then shifts to the defense to show, by a preponderance of the evidence, that there existed insufficient information to demonstrate probable cause and as such the conduct of the police was illegal, requiring suppression of any physical evidence recovered from the defendant and that the identification procedures employed were so unnecessarily suggestive as to create a substantial likelihood of misidentification. *People v. Berrios*, 28 N.Y.2d 361, (1971); *People v. Duuvon*, 77 N.Y.2d 541, (1991). Probable cause requires “the existence of facts and circumstances, which viewed together, would lead a reasonable person possessing the same expertise as the arresting officer to conclude that an offense has been or is being committed.” *People v. White*, 117 A.D.2d 127, 131 (2nd Dept 1986).

The Court of Appeals held in *People v. Robinson*, 97 N.Y.2d 341 (2001), where a police officer has probable cause to detain a motorist temporarily for a traffic violation, such a seizure does not violate Fourth Amendment or the State Constitution even though the underlying reason for the stop may have been to investigate some other matter. In *People v. Bookman*, 131 A.D.3d 1258 (2nd Dept 2015), the court reasoned the officer had probable cause to stop defendant's

vehicle for a traffic violation based on an object hanging from the rearview mirror obstructing the operator's view through the windshield, in violation of Vehicle and Traffic Law.

Here, Officer Byrnes testified that November 3, 2017 at approximately 10:30p.m., he observed a Mitsubishi Galant traveling northbound on Powell Street with one headlight out. Officer Wallace also testified that he observed the same vehicle with no headlights on. Regardless of whether there was only one headlight out or both, as this was a violation of the Vehicle and Traffic Law, it constituted a proper predicate for a stop. *See People v. Robinson*, supra. The court credits the testimony of both officers on this issue and therefore finds the car stop was supported by probable cause.

Having determined that the stop of the vehicle was legal, it is necessary to examine whether the subsequent search of the vehicle and arrest of the Defendant were predicated upon probable cause. In this case, probable cause is entirely based on Officer Wallace's testimony that he saw an open backpack with a firearm between the Defendant's legs. Officer Byrnes testified that he and his partner Officer Gammello approached the vehicle and observed the four male occupants including the Defendant sitting in the front passenger seat. Yet Officer Byrnes makes no mention of him nor his partner seeing an open backpack with a firearm in plain view. Furthermore, there was no testimony presented at the hearing from Officer Gammello who was actually on the passenger's side of the vehicle. On the contrary, Officer Byrnes testified that only after everyone was taken out of the vehicle did he walk around to the passenger side of the vehicle and observe the firearm in the bookbag. Given the totality of the circumstances, the People have failed to demonstrate the credibility of Officer Wallace's testimony on this issue. The court instead credits the Defendant's testimony that the backpack was closed when the officers approached the vehicle. The court finds the police conduct in this instance was unlawful

and the subsequent arrest and warrantless search of the Defendant was not supported by probable cause. Accordingly, Defendant's motion to suppress any evidence as the fruit of an unlawful search is granted.

Huntley

Pursuant to CPL § 60.45, a defendant's statement may not be used against him if the statement was involuntarily made. Furthermore, the statement may not be used if the statement was taken in violation of his Miranda rights. At a *Huntley* hearing, the burden of proof is on the People to prove the voluntariness of the defendant's statement beyond a reasonable doubt. See *People v. Anderson*, 42 N.Y.2d 35 (1977). Moreover, the People must demonstrate that any waiver of the defendant's Miranda rights was done in a knowing and voluntary manner. The test to determine whether a defendant was in custody at the time of his or her statement is "what a reasonable [person], innocent of any crime, would have thought had he [or she] been in the defendant's position." *People v. Yuki*, 25 N.Y.2d 585, 589 (1969). Having found that the search and arrest of the Defendant lacked probable cause, it is not necessary for the court to review the legality of the statement attributed to him. Rather, they must be suppressed as the fruit of that illegal search and arrest. Accordingly, Defendant's motion to suppress his statements is granted.

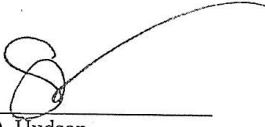
Accordingly, it is hereby:

ORDERED, that the Defendant's motion to suppress the physical evidence seized is granted; and it is further

ORDERED, that the Defendant's motion to suppress his statements is granted.

This opinion shall constitute the decision and order of the court.

Dated: December 5, 2018
Brooklyn, New York



Hon. Sharen D. Hudson
A.J.S.C.

